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Cecil J. Hill

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of the new Federal Rules, it is generally held that an amendment will not state a new cause of action if the facts stated show ". . . substantially the same wrong with respect to the same transaction . . . although the form of liability asserted or the alleged incidents of the transaction may be different."<sup>32</sup> By application of this principle to the case at hand, the result reached by the court seems unavoidable. The plaintiff sought no relief against the partnership in his original complaint, but both the original and amended complaints were directed against the conduct of the individual defendant.

JAMES G. HUDSON, JR.

### **White Slave Traffic Act—Intent and Purpose within the Meaning of the Act**

Defendants operated a house of prostitution in Nebraska. They took a vacation trip to Utah, carrying two prostitutes employed in their house. It was undisputed that the trip was planned as a vacation, the respective parties bearing individual expenses. Upon their return with the defendants, the girls re-entered the defendants' employ. The United States Supreme Court held that there was no violation of the "White Slave Traffic Act" by the defendants, for they did not transport the girls with the intent or purpose to facilitate prostitution within the meaning of the Act. Furthermore, the fact that the girls resumed their immoral practice did not operate to inject a retroactive illegal purpose into the trip.<sup>1</sup> This case raises the interesting question: What constitutes "intent and purpose" within the meaning of the "White Slave Traffic Act?"

The "Mann Act," most often called the "White Slave Traffic Act," provides that "Any person who shall knowingly transport or cause to be transported . . . in interstate commerce . . . any woman or girl for the purposes of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce; entice; or compel such woman or girl to become a prostitute or to give herself up to debauchery, or engage in any other immoral practice . . . shall be deemed guilty of a felony. . . ."<sup>2</sup> Thus, it appears from the reading of the statute that there are two requisites to a conviction: (1) knowingly transporting in interstate commerce (2) for the purpose of prostitution, debauchery, or any other immoral purpose.<sup>3</sup> Under the statute there is no distinction between "intent" and "purpose." If the transportation

<sup>32</sup> *Brown v. N. Y. Life Ins. Co.*, 32 F. Supp. 443 (D. N. J. 1940); *accord*, *White v. Holland Fur. Co., Inc.*, 31 F. Supp. 32 (S. D. Ohio, 1939).

<sup>1</sup> *Mortensen v. U. S.*, — U. S. —, 64 Sup. Ct. 1037, — L. ed. — (1944).

<sup>2</sup> 36 STAT. 825 (1910), 18 U. S. C. §398 (1927).

<sup>3</sup> *U. S. v. Lewis*, 110 F. (2d) 460 (C. C. A. 7th, 1940), *cert. den.*, 310 U. S. 634, 60 Sup. Ct. 1077, 84 L. ed. 1404 (1940); *Shama v. U. S.*, 94 F. (2d) 1 (C. C. A. 8th, 1938).

was for the *purpose* of an unlawful intercourse, it must have been with the *intent* to have unlawful intercourse or to engage in some immoral purpose.<sup>4</sup> The offense is complete the moment a woman or girl is transported in interstate commerce with the requisite intent;<sup>5</sup> while the immoral conduct and relations of the parties, consummation of purpose,<sup>6\*</sup> and immoral purpose<sup>7\*</sup> of the woman transported are in no sense parts of the offense.

The Act attempts to curb illicit relations in three fields:

(1) Prostitution. In a restricted sense, prostitution is the practice of a female in offering her body to indiscriminate intercourse with men.<sup>8</sup>

(2) Debauchery. Under the statute "debauchery" is not limited to the meaning of seduction, which would require proof that the defendant procured the transportation in order that he might more surely and readily induce the woman to yield to his wishes. Rather, the term includes a purpose to expose her to such influence as will naturally and inevitably so corrupt her character as to lead her to acts of sexual immorality.<sup>9</sup>

(3) Other Immoral Practices. This all-inclusive term was adopted as an attempt to include any immoral relations not covered specifically in prostitution and debauchery. Thus, there have been convictions under this section of the statute where women were transported to manage houses of prostitution,<sup>10</sup> participate in nude dances,<sup>11</sup> entice men to enter houses of prostitution,<sup>12\*</sup> and to work in low-class dance

<sup>4</sup> *Carey v. U. S.*, 265 Fed. 515 (C. C. A. 8th, 1920); *U. S. v. Otero*, 5 F. Supp. 201 (W. D. Ky. 1933).

<sup>5</sup> *Wilson v. U. S.*, 232 U. S. 563, 34 Sup. Ct. 347, 58 L. ed. 728 (1913); *Ellis v. U. S.*, 138 F. (2d) 612 (C. C. A. 8th, 1943); *Neff v. U. S.*, 105 F. (2d) 688 (C. C. A. 8th, 1939).

<sup>6\*</sup> *Wilson v. U. S.*, 232 U. S. 563, 34 Sup. Ct. 347, 58 L. ed. 728 (1913) (The solicitor later refused to accept the services.); *Malagna v. U. S.*, 57 F. (2d) 822 (C. C. A. 1st, 1932); *U. S. v. Brand*, 229 Fed. 847 (S. D. N. Y. 1916); *U. S. v. Long*, 16 F. Supp. 231 (E. D. Ill. 1936) (Accused hired girls supposedly for ticket agents, but later informed them that they were to participate in a "hootch show." The girls rebelled.).

<sup>7\*</sup> *Hart v. U. S.*, 11 F. (2d) 499 (C. C. A. 9th, 1926), *cert. den.*, 273 U. S. 694, 47 Sup. Ct. 92, 71 L. ed. 84 (1926) (The government does not have to prove an immoral purpose on the part of the woman transported in order to sustain a conviction.).

<sup>8</sup> *People v. Demouset*, 71 Cal. 611, 613, 12 Pac. 788, 789 (1887); *State v. Godwin*, 33 Kan. 538, 542, 6 Pac. 899, 901 (1885); *State v. Brow*, 64 N. H. 577, 579, 15 Atl. 216, 217 (1888); *Carpenter v. People*, 8 Barb. 603, 610 (N. Y. 1850).

<sup>9</sup> *Van Pelt v. U. S.* 240 Fed. 346, 348, L. R. A. 1917E, 1135, 1137 (C. C. A. 4th, 1917).

<sup>10</sup> *Simpson v. U. S.*, 157 C. C. A. 470, 245 Fed. 278 (C. C. A. 9th, 1917), *cert. den.*, 245 U. S. 667, 38 Sup. Ct. 133, 62 L. ed. 538 (1917).

<sup>11</sup> *U. S. v. Lewis*, 110 F. (2d) 460 (C. C. A. 7th, 1940), *cert. den.*, 310 U. S. 634, 60 Sup. Ct. 1077, 84 L. ed. 1403 (1940).

<sup>12\*</sup> *Beyer v. U. S.*, 163 C. C. A. 289, 251 Fed. 39 (C. C. A. 9th, 1918) (Accused hired girls as entertainers for a Mexican dance hall. The girls were under contract not to act as prostitutes; but were instructed to state, if asked, that other girls were available. The court held that although there was no debauchery contemplated by the accused in transporting the girls, the purpose was ultimately brought within the statute; the luring of men to a house of prostitution is as essential as a manager would have been.).

halls.<sup>13\*</sup> It appears that if a female is transported for the purpose of having her engage in acts which tend to lead ultimately to that form of debauchery or immoral conduct consisting of sexual acts, there is a transportation for the "purpose of prostitution, debauchery, or other immoral purpose"; and whether or not the accused intended to debauch the girls is entirely immaterial.

Interstate transportation as denounced by the Act must have unlawful intent for its primary purpose, or be a means of effecting or facilitating sexual relations in order to sustain a conviction.<sup>14\*</sup> There must be convincing evidence of the intention to transport the woman in question for immoral purposes, and such intent must be formed before the woman in question reached the state to which she was being transported.<sup>15\*</sup>

If the sexual relations were not the purpose of the trip, but rather were incidental thereto, there is no violation of the statute. The mere fact that an immoral act was committed on an interstate trip does not

<sup>13\*</sup> *Athanasaw v. U. S.*, 227 U. S. 326, 33 Sup. Ct. 285, 57 L. ed. 528 (1913) (Accused employed an innocent country girl for the stage. It appeared that the theatre was a place where the employees drank, cursed, and smoked excessively. There was evidence of an intent on the part of the accused that he had engaged the girl, possibly with an intent to debauch her later. The court held this employment to be an efficient "school of debauchery," leading to illicit intercourse ultimately.).

<sup>14\*</sup> *Drossos v. U. S.*, 16 F. (2d) 833 (C. C. A. 8th, 1927) (Defendant transported a married woman and her child at the woman's request. Counsel for the defendant requested the court to instruct the jury that if the defendant—who appeared to be very ignorant—believed that he could marry the woman in another state and intended to do so before he cohabited with her, the verdict should be not guilty. Upon the refusal of the District Court to do so, the Circuit Court of Appeals reversed, saying that whether the defendant intended to defraud the woman was a question of fact for the jury; and the defendant was not guilty if he had no intentions of having sexual relations with the woman unless and until he might lawfully marry her.); *Corbett v. U. S.*, 299 Fed. 27 (C. C. A. 9th, 1924) (Defendant paid for the transportation of a woman, with whom he was having sexual relations, from one state to another, where she visited her children. Then he paid the fare for her return trip. The Court held intent to be a jury question.); *Sloan v. U. S.*, 287 Fed. 91 (C. C. A. 8th, 1923) (Evidence showed that the woman was transported for the purpose of securing employment. Intercourse was had frequently before and after the trip.); *Fisher v. U. S.*, 266 Fed. 667 (C. C. A. 4th, 1920); *Welsh v. U. S.*, 136 C. C. A. 370, 220 Fed. 764 (C. C. A. 4th, 1915) (Accused delivered a message from the woman's aunt, requesting her to return. The court held that, in order to sustain a conviction, it was essential to show that the trip would not have been made unless such trip was made by the woman at the instance of the accused; and the mere fact that the accused had in mind the probability or expectation of again possessing the woman is immaterial, if she made the trip for other reasons.).

<sup>15\*</sup> *Alpert v. U. S.*, 12 F. (2d) 352 (C. C. A. 2d, 1926); *Gillette v. U. S.*, 149 C. C. A. 405, 236 Fed. 215 (C. C. A. 8th, 1916) (State investigator invited a prostitute from a house which he was investigating to dine with him in another state. After the meal they became intoxicated, and sexual relations resulted. The court held that the trip was not made with the intent and purpose of debauchery.); *U. S. v. Oriolo*, 49 F. Supp. 226 (E. D. Pa. 1943) (Defendant informed a woman whom he was transporting that she would have to resume prostitution. This declaration occurred while the train was moving between New Jersey and Pennsylvania. The court held the time when the defendant formed the intention was a question for the jury.).

of itself constitute the essential elements of the offense, for such act may have been without forethought or anticipation at the time the journey was begun.<sup>16\*</sup> In those cases where the accused freely had intercourse with the woman transported prior to the trip, the courts are inclined to treat such intercourse as incidental to the primary purpose of the trip.<sup>17</sup> But it should be noted that if one of the defendant's purposes, among others, in transporting a woman in interstate commerce is to engage in illicit intercourse, it is sufficient to warrant a conviction.<sup>18\*</sup>

Although a man can be convicted of transporting his wife for the purposes covered by this Act,<sup>19</sup> a bigamous marriage performed in a state other than the "home" state of the parties—nothing else appearing—will not constitute a violation.<sup>20\*</sup> However, if the parties cohabit as man and wife after the bigamous marriage in another state, there is an offense within the meaning of the statute.<sup>21</sup>

From the secrecy surrounding the crime committed, it is virtually impossible to obtain direct evidence to prove intent. Therefore, intent, purpose, or motive must rest oftentimes in inference.<sup>22</sup> In determining the existence of such intent and purpose on the part of the accused, the jury is privileged to consider the conduct of the parties within a reasonable time before and after the transportation, and such evidence is not to be rejected because it might prove another crime against the parties.<sup>23\*</sup> But the conduct must be sufficiently significant in character and near in point of time to afford a presumption that the element sought to be established existed at the time of the commission of the

<sup>16\*</sup> *U. S. v. Grace*, 73 F. (2d) 294 (C. C. A. 2nd, 1934) (Girl accompanied a bishop on a trip for the sole purpose of playing the piano.); *Ghadieli v. U. S.*, 17 F. (2d) 236 (C. C. A. 9th, 1927), *cert. den.*, 274 U. S. 747, 47 Sup. Ct. 660, 71 L. ed. 1328 (1927) (Employer transported his secretary on business.); *Biggerstaff v. U. S.*, 260 Fed. 926 (C. C. A. 8th, 1919) (Defendant accompanied a woman on a journey, though not voluntarily, and during the journey had sexual relations.).

<sup>17</sup> See *Yoder v. U. S.*, 80 F. (2d) 665 (C. C. A. 10th, 1935); *Van Pelt v. U. S.*, 153 C. C. A. 272, 240 Fed. 346, L. R. A. 1917E, 1135 (C. C. A. 4th, 1917).

<sup>18\*</sup> *Carey v. U. S.*, 265 Fed. 515 (C. C. A. 8th, 1920) (Accused furnished prosecutor with money to make an interstate trip to discuss her pregnancy and to have illicit relations with her.).

<sup>19</sup> *U. S. v. Mitchell*, 138 F. (2d) 831 (C. C. A. 2nd, 1943), *cert. den.*, 321 U. S. 794, 64 Sup. Ct. 785, 88 L. ed. 699 (1943).

<sup>20\*</sup> *Gerbino v. U. S.*, 293 Fed. 754 (C. C. A. 3rd, 1923); *U. S. v. Smith*, 52 F. Supp. 610 (E. D. Pa. 1943). In both of these cases the accused induced a girl to enter interstate commerce for the purpose of marrying him. After the bigamous marriage the "husband" and "wife" returned immediately to their respective homes.

<sup>21</sup> *Burgess v. U. S.*, 54 App. D. C. 71, 294 Fed. 1002 (D. C., 1924).

<sup>22</sup> *U. S. v. Renegelli*, 133 F. (2d) 595 (1943); *U. S. v. Oriolo*, 49 F. Supp. 226 (E. D. Pa. 1943).

<sup>23\*</sup> *Tedesco v. U. S.*, 118 F. (2d) 737 (C. C. A. 9th, 1941) (Introduced a prostitute to show the defendant's knowledge as to the kind of place he was taking the woman transported.); *U. S. v. Oriolo*, 49 F. Supp. 226 (E. D. Pa. 1943) (Woman worked for the defendant as a prostitute in one state. He paid her fare into another. Evidence was admissible to show intent.).

offense. The limit is largely within the discretion of the judge in each particular case.<sup>24</sup> Such evidence as the immaturity and inexperience of the girls transported;<sup>25</sup> the circumstances of employment, conditions of contract, and supervision of the girls transported;<sup>26</sup> prior illicit relations of the parties;<sup>27</sup> letters;<sup>28</sup> the diary of the accused's wife;<sup>29</sup> character of the accused's wife and his attitude toward her;<sup>30</sup> as well as the fact that he entered her into a bawdy-house;<sup>31</sup> the fact that the accused brought other women into the state for the purpose of prostitution;<sup>32</sup> and conversation dealing with the "attractive" life of a prostitute has been held admissible to prove intent.<sup>33</sup> Furthermore, even though the woman transported vigorously denies that the accused induced her to make the trip,<sup>34\*</sup> or testifies that the idea of going into another state originated with her and the accused was opposed to it,<sup>35</sup> still it is for the jury to determine what was the purpose of the accused.

In the principal case the majority of the Supreme Court relied on the case of *Hansen v. Haff*<sup>36</sup> in holding insufficient intent was present to sustain a conviction. In this case an alien woman, who was employed as a domestic servant in California, made a trip to Europe with her paramour to visit her parents. Upon her return to America with him, she continued to have relations on the trip to California. During the trip across the continent she was arrested and ordered to be deported by the Secretary of Labor under an immigration statute providing for deportation of alien prostitutes. The Supreme Court reversed the order, saying that her paramount object in returning was to resume a legitimate occupation, and that such illicit acts were incidental to the trip.

The dissent in the principal case relied on the case of *Lapina v. Williams*,<sup>37</sup> wherein the defendant, an alien prostitute, made a temporary trip to Russia to visit her parents. Upon her return to America, she represented that she was the wife of an American citizen in order that she might gain admission. There was evidence that the primary purpose of her return was to re-enter her profession, which she did immediately upon her return. The court sustained a deportation order.

<sup>24</sup> See *Neff v. U. S.*, 105 F. (2d) 688, 691 (C. C. A. 8th, 1939).

<sup>25</sup> *U. S. v. Lewis*, 110 F. (2d) 460 (C. C. A. 8th, 1939).

<sup>26</sup> *Ghadiali v. U. S.*, 17 F. (2d) 236 (C. C. A. 9th, 1927).

<sup>27</sup> *Ammerman v. U. S.*, 262 Fed. 124 (C. C. A. 8th, 1919).

<sup>28</sup> *Shama v. U. S.*, 94 F. (2d) 1 (C. C. A. 8th, 1938).

<sup>29</sup> *U. S. v. Mitchell*, 138 F. (2d) 831 (C. C. A. 2nd, 1943).

<sup>30</sup> *Suslak v. U. S.*, 213 Fed. 913 (C. C. A. 9th, 1914).

<sup>31</sup> *Cohen v. U. S.*, 120 F. (2d) 139 (C. C. A. 5th, 1939).

<sup>32</sup> *Kinser v. U. S.*, 146 C. C. A. 52, 231 Fed. 856 (C. C. A. 8th, 1916).

<sup>33</sup> *Suslak v. U. S.*, 213 Fed. 913 (C. C. A. 9th, 1914).

<sup>34\*</sup> *U. S. v. Barton*, 134 F. (2d) 484 (C. C. A. 2nd, 1943) (It appeared that the girl transported entertained "guests" when called for that purpose by the accused, and later divided her earnings with the accused.).

<sup>35</sup> *U. S. v. Renigelli*, 133 F. (2d) 595 (C. C. A. 3d, 1943).

<sup>36</sup> 291 U. S. 559, 54 Sup. Ct. 494, 78 L. ed. 968 (1933).

<sup>37</sup> 232 U. S. 78, 34 Sup. Ct. 196, 58 L. ed. 515 (1913).

From an analysis of the cases, it appears that the principal case is distinguishable from the *Hansen* case, *supra*, for in that case the defendant intended to return to a *legitimate* occupation. In the *Lapina* case, *supra*, as in the principal case, there was an intent to return to an *illegitimate* occupation, and in this respect the cases are in point. However, upon closer analysis, it appears that the principal case is distinguishable from both cases relied upon by the court. Even though the return trip was made to resume activities in an illegal profession, still such return trip was a part of a larger planned journey, made with no intent to facilitate the purposes of prostitution, debauchery, or other immoral purposes. The primary objective of the entire trip was to enjoy a vacation, and the return to the house of prostitution was merely an incident thereto. It is submitted that the Supreme Court reached the correct result.

CECIL J. HILL

### Constitutional Law—Right of Women to Serve on Juries\*

The defendant was convicted for violations of the Prohibition laws by a jury consisting of ten men and two women. At the impaneling of the jury in the trial court, the defendant objected to the two women on the jury, but this objection was overruled. The defendant appealed on the ground of disqualification because of sex; and, in a 5-2 decision, the Supreme Court of North Carolina granted a new trial and ruled that women were not eligible to serve on juries in this state.<sup>1</sup>

The majority based its decision on these points: (1) Constitutional provisions regarding trial by jury<sup>2</sup> are to be construed according to their meaning at the time of the adoption of the Constitution in 1868, at which time a common law jury excluded women *propter defectum sexus*.<sup>3</sup> (2) Even prior to the adoption of the Constitution, the statute,<sup>4</sup>

\* This topic has been discussed in many periodicals. The following formed part of the bibliography for this note: Miller, *The Woman Juror* (1922) 2 ORE. L. REV. 30; NOTES (1932) 12 B. U. L. REV. 122, (1925) 13 CALIF. L. REV. 155, (1939) 18 CHI-KENT REV. 103, (1932) 32 COL. L. REV. 134, (1925) 25 COL. L. REV. 376, (1926) 11 CORN. L. Q. 533, (1930) 18 GEO. L. J. 393, (1928) 22 ILL. L. REV. 777, (1926) 21 ILL. L. REV. 292, (1927) 2 IND. L. J. 566, (1922) 7 IOWA L. BULL. 190, (1928) 32 LAW NOTES 124, (1923) 26 LAW NOTES 224, (1921) 19 MICH. L. REV. 662, (1927) 12 MINN. L. REV. 81, (1921) 6 MINN. L. REV. 78, (1921) 5 MINN. L. REV. 318, (1930) 74 SOL. J. 510, (1937) 12 ST. JOHN'S L. REV. 172, (1927) 12 ST. LOUIS L. REV. 138, (1932) 6 TULANE L. REV. 324, (1937) 71 U. S. L. REV. 75, (1921) 69 U. OF PA. L. REV. 386, (1920) 68 U. OF PA. L. REV. 398, (1926) 12 VA. L. REV. 661, (1921) 8 VA. L. REV. 139, (1926) 35 YALE L. J. 887, (1919) 28 YALE L. J. 515, (1918) 27 YALE L. J. 423.

<sup>1</sup> State v. Emery, 224 N. C. 581, 31 S. E. (2d) 858 (1944).

<sup>2</sup> "No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court." N. C. CONST. ART. I, §13. "No person ought to be . . . deprived of his . . . liberty or property, but by the law of the land." N. C. CONST. ART. I, §17. "In all controversies at law respecting property, the ancient mode of trial by jury . . . ought to remain sacred and inviolate." N. C. CONST. ART. I, §19.

<sup>3</sup> 3 BL. COMM. \*352.

<sup>4</sup> N. C. GEN. STAT. (1943) §9-1.